

<b>Title</b>	<b>Conduct During Judicial Election Campaigns</b> (amend canon 5B of the California Code of Judicial Ethics)
<b>Summary</b>	These proposed amendments would (1) make the prohibitions on certain judicial campaign conduct in California consistent with <i>Republican Party of Minnesota v. White</i> (2002) 536 U.S.765, and (2) clarify the scope of subsection (2) of canon 5B.
<b>Source</b>	Supreme Court Advisory Committee on the Code of Judicial Ethics
<b>Staff</b>	Mark Jacobson, 415-865-7898
<b>Discussion</b>	<p><b><u>Canon 5B(1)</u></b></p> <p>In July 2002, the U.S. Supreme Court held in <i>Republican Party of Minnesota v. White</i> (2002) 536 U.S. 765, that a Minnesota canon of judicial conduct that prohibited a judicial candidate from “announc[ing] his or her views on disputed legal or political issues” violated the First Amendment. The California Code of Judicial Ethics does not contain a similar “announce clause.” Rather, canon 5B(1) states that a judicial candidate shall not “make statements to the electorate or the appointing authority that commit or appear to commit the candidate with respect to cases, controversies, or issues that could come before the courts.” This is referred to as the “commit clause.” The U.S. Supreme Court did not address the validity of the commit clause. The California Supreme Court asked the Supreme Court Advisory Committee on the Code of Judicial Ethics to consider whether canon 5B should be amended in light of <i>White</i>.</p> <p>The committee has recommended to the Supreme Court that the attached amended canon be circulated for comment. The committee recommended that canon 5B(1) be retained with one amendment. It concluded that the provision barring statements that would “appear to commit” the candidate may be overinclusive and unconstitutionally vague. The proposed amendment would therefore delete the phrase “appear to commit.”</p> <p>The committee also recommended that a commentary be added to canon 5B to make clear that the U.S. Supreme Court’s <i>White</i> decision has been considered in promulgating the code, and that California does not have the “announce clause” disapproved in that case. The commentary would clarify that <i>White</i> did not address the “commit clause,” which is contained in canon 5B. Finally, the commentary would state that the phrase “appear to commit” has been deleted.</p>

**Canon 5B(2)**

Subsection (2) of canon 5B prohibits judicial candidates from “knowingly misrepresent[ing] the identity, qualifications, present position, or any other fact concerning the candidate or his or her opponent.” The committee recommended that the scope of canon 5B(2) be clarified through amendments to the commentary.

The text of the amended canon and the new commentary is attached.

Attachment

Canon 5B of the California Code of Judicial Ethics would be amended effective January 1, 2004, to read:

**Canon 5B:**

A candidate for election or appointment to judicial office shall not (1) make statements to the electorate or the appointing authority that commit ~~or appear to~~ ~~commit~~ the candidate with respect to cases, controversies, or issues that could come before the courts, or (2) knowingly misrepresent the identity, qualifications, present position, or any other fact concerning the candidate or his or her opponent.

ADVISORY COMMITTEE COMMENTARY:

This code does not contain the “announce clause” that was the subject of the United States Supreme Court’s decision in Republican Party of Minnesota v. White (2002) 536 U.S. 765. That opinion did not address the “commit clause,” which is contained in Canon 5B(1). The phrase “appear to commit” has been deleted to clarify that judicial candidates cannot promise to take a particular position on cases, controversies, or issues prior to taking the bench and presiding over individual cases.

Canon 5B(2) prohibits making knowing misrepresentations, including false statements or misleading true statements, during an election campaign because doing so would violate Canons 1 and 2A, and may violate other canons.